IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.363 OF 2007
ARISING FROM
REPORT OF THE OFFICIAL LIQUIDATOR DATED
4TH DECEMBER, 2006
IN
COMPANY PETITION NO.7 OF 1971

WITH

NOTICE OF MOTION NO.1970 OF 2007

Protochem Laboratories P.Ltd. .. Appellant

Vs.

Esso Master Industries & Anr. .. Respondents

Mr.A.V.Anturkar, Sr.Advocate i/b Mr.B.B.Parekh for the appellant

Dr.A.K.Barthakur for the respondent nos.2 and 3

Mr.S.Ramakanth, Dy.Official Liquidator present

**CORAM : J.N.PATEL &**
**A.A.SAYED, JJ.**

**DATED : 9TH AUGUST, 2007**

P.C.:

1. Heard the learned counsel for the parties.

2. We propose to dispose of this Company

Appeal at the stage of admission itself.

3. The appellant is the proposed purchaser who has impugned the order dt.22.03.07 passed by the Company Judge on the Official Liquidator's Report dated 15.11.95 filed in Company Petition No.7 of 1971.

4. The matter pertains to liquidation of M/s.Glass Carboys & Pressed Wares Ltd (in Liqn.) & Others at the instance of Esso Master Industries. The respondents are the secured creditors.

5. During the pendency of the Company Petition, the Official Liquidator filed a report dated 15.11.1995 for the approval of the Consent Terms entered into by the secured creditors and the purchaser. It is not disputed that the Consent Terms came to be accepted by the court by an order passed on 25.04.1996. In view of the fact that the Official Liquidator found that the parties having not acted upon the Consent Terms, he moved the court by filing Official Liquidator's Report dated 04.12.06 seeking directions from the Company Judge

as to whether the court would be pleased to direct M.S.F.C. to get the revaluation of the property done from a Government approved valuer for resale of the same which led to the passing of the impugned order.

6. Mr.Anturkar, the learned Senior Advocate appearing for the appellant purchaser, as per the consent terms raised two-fold contentions. Firstly, that the Company Judge has not taken into consideration that the sanction of the sale by the court was mandatory and that the transaction was not completed, so as to obtain sanction of the court to dispose of the property in question. There was no effective order to show that there was approval granted by the court to the terms agreed between the parties as incorporated in the consent terms tendered before the Company Judge. Secondly, it is submitted that the appellant alone is not responsible for the delay in completing the transaction and the respondent / secured creditors have contributed to the same and that insofar as the appellant is concerned, it has always shown its willingness and bonafides by abiding to the terms

on which it has agreed to purchase the property and even had a draft prepared for the entire amount of the consideration.

7. On the other hand, it is contended that the learned Company Judge was justified in accepting the report of the Official Liquidator and passing the impugned order directing the property to be put for sale on obtaining fresh valuation of the property from a Government approved valuer on the panel of the liquidator.

8. The learned counsel for the parties drew our attention to the various correspondence which has taken place between the parties in respect of the transaction in question to substantiate their rival contentions.

9. On going through the record and the impugned order, what we find is that once the parties accept that they had agreed to dispose of the property in question in accordance with the consent terms arrived between the parties and having submitted it to the court for its approval through its official

liquidator and the court having approved the consent terms on 25.04.96, it suffices' to say that the court has sanctioned the sale of the property in question in accordance with the consent terms. The appellant cannot be heard on the issue that the sale has not received the approval or sanction from the court. The next thing which we find is that the appellant has tried to deviate from the consent terms entered between the parties and the secured creditors who are the respondents without approaching the court in the matter, though such liberty was granted and delayed the transaction by trying to negotiate the terms and conditions and thereby committed breach of the terms and conditions on which court accorded sanction for sale of the property.

10. Nothing prevented the appellant from approaching the Company Judge if it was under certain misconception relating to the interpretation of the terms and conditions recorded in the consent terms or wanted the same to be changed or altered.

11. The correspondence clearly shows that the respondent secured creditors did not consent to any modification of the terms and conditions recorded in the consent terms. Therefore, in the facts and circumstances, we find that the learned Company Judge was justified in coming to the conclusion that the appellant has not complied with clause 3 of the consent terms and even took into consideration the correspondence between the parties and found that in spite of opportunities being given by the secured creditors to the appellant, the appellant did not comply with its obligation under the consent terms and therefore, the secured creditors were justified in moving the Official Liquidator to seek further orders from the court in the matter of disposal of the property of the Company under the liquidation.

12. We do not find any error or illegality in the impugned order. The appeal stands dismissed with costs. In view of the fact that this court has dismissed the appeal in limine, the notice of motion taken out by the applicants does not survive. The same is also disposed of as

infructuous.

**( J.N. PATEL, J )**

**( A.A. SAYED, J )**